

REMARKS

Claim 1 is amended to recite a layer of coating that comprises one or more antioxidants applied to the surface of the nut and an edible film applied to the one or more antioxidants. Support for this amendment can be found throughout the specification as filed, including, for example, page 8, lines 11-21, page 11, lines 2-3, Examples 4 and 5, and Figures 5 and 6.

Claim 9 is amended to recite 0.05% and 4% of the edible compound. Support for this amendment can be found throughout the specification as filed, including, for example, page 7, lines 8-12.

Claim 11 is amended to recite plasticizers, functional and/or bioactive or nutraceutical components, colours, aromas, flavour boosters, sweeteners, polishes, and their mixtures. Support for this amendment can be found throughout the specification as filed, including, for example page 8, lines 11-21.

Claim 12 is amended to recite "applying the one or more antioxidants to the surface of a nut to be coated and thereafter," "a filmogenic solution consisting of a solvent and the edible compound to the surface of said nut to be coated," "to the one or more antioxidants," and "thereby removing the solvent." Support for this amendment can be found throughout the specification as filed, including, for example, page 8, lines 11-21, page 11, lines 2-3, Examples 4 and 5, and Figures 5 and 6.

Claim 13 is amended to recite "said edible compound is selected."

No new matter is added by these amendments. Claims 1-3, 7, 9-13, 16, 18-28, 30-32, and 37 are pending.

Claim Rejections under 35 U.S.C. § 112, ¶ 2

Claims 12-13, 16, 18-28, 30 and 32 are rejected under 35 U.S.C. § 112, second paragraph. The Examiner asserts that the scope of claim 12 is not clear because claim 12 depends from claim 1 and the term "consisting of" excludes any ingredients not specified in the claim.

Applicant respectfully submit that pending Claim 12 relates to a method of making the nut composition of Claim 1, and includes the steps of applying the one or more antioxidants to

the surface of the nut to be coated, applying a filmogenic solution comprising a solvent and the edible compound of Claim 1 to the one or more antioxidants, and drying the filmogenic solution. Drying the filmogenic solution removes the solvent from the nut composition to be coated. *See, page 12, lines 15-26 of the specification.* Therefore, the nut composition produced by the method of Claim 12 comprises a nut, and a coating layer comprising one or more antioxidants, and an edible film consisting of the 'edible compound' selected from elements specified in Claim 1. Thus, the nut composition produced by the method of Claim 12 does not include any 'edible compound' not specified in Claim 1. Accordingly, Applicant respectfully requests that that rejection to Claim 12 and claims dependent therefrom be withdrawn.

Non-Obviousness under 35 U.S.C. § 103

Claims 1-3, 9-13, 17-23, 25, 27-28, 30-32 are rejected under 35 USC § 103(a) over Steele (WO 83/00278) in view of Grillo (US 5,470,581). Claims 7 and 16 are rejected under 35 USC § 103(a) over Steele in view of Grillo and Kester ("An Edible Film of Lipids and Cellulose Ether"). Claims 24 and 26 are rejected under 35 USC § 103(a) over Steele in view of Grillo and Fellows ("Food Processing Technology-Principles and Practice").

The pending claims relate to a protective edible coating comprising an antioxidant applied directly to the surface of a nut, and an edible film applied to the antioxidant and consisting of an edible compound. As shown in Example 4, nuts coated with a combination of an antioxidant applied to the surface of a nut and an edible film applied to the antioxidant (Treatment 3) have significantly improved oxidative stability over nuts coated with either an edible film only (Treatment 1), or antioxidant only (Treatment 2). *Example 4.* In particular, nuts coated with an applied tocopherol solution and HPMC film applied to the tocopherol, had an oxidative stability more than 1 hour greater than the oxidative stabilities of nuts coated with either a tocopherol solution only or a HPMC film only. *Page 18, lines 31-35, and Figure 5.* Moreover, this superior oxidative stability "indicates a synergic anti-oxidation action when the two treatments [namely, an applied antioxidant, and an edible coating applied to the antioxidant] are used together." *Page 19, lines 1-2.*

In contrast, Steele discloses a method of making blanched peanuts wherein the characteristic flavor of the peanut skins can be retained without having the problem of larges

quantities of skins flaking off during normal distribution and handling. Steele does not disclose or reasonably suggest an antioxidant applied to the surface of the nut, and an edible coating applied to the antioxidant in the methods and compositions described therein. Moreover, Steele fails to appreciate or suggest any synergistic effect between any putative antioxidant and an edible coating.

Grillo discloses a method for coating a with a protecting film, wherein the method comprises the steps of: (a) mixing a cellulosic polymer, maltodextrin, and a plasticizer into water to form an aqueous suspension; (b) spraying this suspension onto the substrate to be coated; and (c) drying the film coating obtained. However, Grillo does not disclose or reasonably suggest the use of an antioxidant. Moreover, Grillo does not disclose or reasonably suggest an antioxidant applied to the surface of a nut, and an edible coating applied to the antioxidant in the methods and compositions described therein. Therefore, Applicant respectfully submits that the pending claims are non-obvious over Steele in view of Grillo. Neither Steele nor Grillo disclose or reasonably suggest an antioxidant applied to the surface of a nut, and an edible coating applied to the antioxidant. Furthermore, Kester or Fellows, do not supply any of the insufficiencies of Steele or Grillo. Accordingly, the pending claims are non-obvious over any combination of the cited references.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are non-obvious. None of the references disclose or reasonably suggest an antioxidant applied to the surface of a nut, and an edible coating applied to the antioxidant. Moreover, Applicant has discovered that an antioxidant applied to the surface of a nut, and an edible film applied to the antioxidant provides superior synergistic properties that include improved oxidative stability. None of the cited references suggest such synergistic properties. Accordingly, Applicant respectfully submits that the pending claims are non-obvious and requests that the rejections under 35 USC § 103(a) be withdrawn.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather,

Application No.: 10/530,920
Filing Date: April 8, 2005

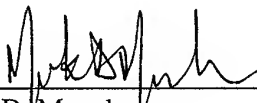
any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 30, 2010

By: 
Mark D. Marsden
Registration No. 57,871
Attorney of Record
Customer No. 20995
(619) 235-8550

8830102-nh
040510